



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

BBB, LLC

Registration No. VAR051453

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and BBB, LLC, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in §§ 10.1-1184 and 62.1-44.7 of the Va. Code.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in §10.1-1183 of the Va. Code.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Regulation” means 9 VAC 25-151-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity.

7. “BBB” means BBB, LLC
8. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. “Bauxsol” the trade name for a bauxite-based compound means a reddish pasty solid or granules with low hydraulic conductivity used for the treatment of acid or metal contaminated water and soils.

SECTION C: Finding of Facts and Conclusions of Law

1. BBB, LLC owns and leases a 94 acre waterfront industrial park with a business address of 1401 Precon Drive, Chesapeake, Virginia (“facility”), which includes Waterway Recycling, which operates a construction and debris recycling facility (“Waterway”).
2. On July 15, 2005, DEQ Inspection Staff (“Staff”) conducted an inspection of the facility in response to an anonymous complaint which was received by DEQ on July 15, 2005, regarding an apparent discharge to the Elizabeth River near the facility. During the site visit BBB stated that they were not aware of the discharge prior to the site visit. Staff observed and documented the following: (a) a discharge with a red tint from the storm water retention pond to the Elizabeth River; (b) a plume with a red tint extending north from the facility in the Elizabeth River; (c) a red tint where internal outfalls 001 and 002 enter the storm water retention pond; (d) straw bales around the storm water drop inlets conveying storm water to the retention pond were not secured and were washed out by a rain event which occurred earlier on July 15, 2005; (e) high water marks with a red tint were visible on the straw bales which were placed around drop inlets; (f) a fine red powder was observed in two of the drop inlet grates; (g) a fine red powder was tracked offsite. Facility records indicate a barge of Bauxsol had been previously trucked off site. Additionally, Staff observed a large pile of Bauxsol inside the facility’s storage building. Staff alleged that the fine red tint and powder observed in the Elizabeth River the storm water retention pond, on the straw bales and the drop inlets was Bauxsol.
3. On July 19, 2005, Staff conducted a follow-up inspection to observe the condition of the facility. Staff indicated that no discharge was observed from the facility’s storm water retention pond and documented the following: (a) Bauxsol was observed in the storm water retention pond at internal outfall 001; storm water from the drop inlets between the warehouse and the bulkhead discharge to the storm water retention pond through internal outfall 001; (b) straw bales positioned around the drop inlets were replaced but not secured; (c) Bauxsol was observed in drop inlet grates.

4. § 62.1-44.5.A of the Va. Code prohibits waste discharges to State waters except in compliance with a permit issued by the Board. BBB violated the Va. Code by discharging Bauxsol to surface waters of the State on July 15, 2005. BBB is not permitted to discharge industrial wastes from its facility.
5. On July 27, 2005, DEQ issued Notice of Violation ("NOV") No. W2005-07-T-0002, advising Waterway of the unpermitted discharge and applicable statutory and regulatory citations.
6. On August 5, 2005, DEQ received a response to the NOV referenced in paragraph 5 of this Order from BBB. The response indicated that the Bauxsol was accepted by BBB as a one time test and BBB has no long-term agreement to accept or distribute the material. The response also indicated that BBB first learned of the discharge during the inspection conducted by Staff on July 15, 2005.
7. On November 18, 2005, DEQ met with BBB's representatives to discuss the NOV referenced in paragraph 5 of this Order. During the meeting BBB stated that corrective measures have been implemented at the facility to prevent or minimize pollutants in storm water discharges specifically, storm water oil separators have been washed and vacuumed and trench drain and inlet ditches to the storm water retention pond have been washed and vacuumed to remove any Bauxsol that may have been collected through spillage and rain water flow; all storm water drop inlets have been fitted with a filter cloth underneath the grates to capture any soil or debris; gravel berms have been established around certain drop inlets. Additionally, BBB provided documentation indicating that it has cleared the residual Bauxsol from the drop inlet grates, the storm water retention pond and internal outfalls 001 and 002.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders BBB, and BBB voluntarily agrees to pay a civil charge of \$3,500 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include BBB's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BBB, for good cause shown by BBB, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BBB neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BBB declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by BBB to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional Orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

7. BBB shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. BBB shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BBB shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which BBB intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and BBB. Notwithstanding the foregoing, BBB agrees to be bound by any compliance date, which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BBB. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BBB from its obligation to comply with any statute, regulation, Permit condition, other Order, certificate, certification, standard, or requirement otherwise applicable.

11. By its signature below, BBB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16, 2006.

Francis L. Daniel
Francis L. Daniel, Tidewater Regional Director
for DAVID K. PAYLOR ^{CRP} ~~for Robert G. Burnley, Director~~
Department of Environmental Quality

BBB, LLC voluntarily agrees to the issuance of this Order.

By: W. Preston Fussell
Date: 1-4-06

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 4th day of
January, 2006, by W. Preston Fussell, who is
(name)

Managing Member of BBB, LLC on behalf of BBB.
(title)

Ry L. A.
Notary Public
3-31-06

My commission expires: _____